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JUN 07 2007

OFFICE OF PETITIONS

In re Application of :
Michael Wendell Vice :
Application No. 10/072,676 : DECISION ON PETITION
Filed: February 7, 2002 : UNDER 37 C.F.R. §1.137(A)
Attorney Docket Number: 2429-3 :
Title: SERIES ACTIVE FILTERING :
POWER LINE CONDITIONER :

This is a decision on the petition filed February 9, 2007, pursuant to 37 C.F.R. §1.137(a)¹, to revive the above-identified application.

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due, mailed July 28, 2005, which set a shortened statutory period for reply of three months. No extensions of time are permitted for

¹ A grantable petition pursuant to 37 CFR §1.137(a) must be accompanied by:

- (1) the required reply (in a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof);
- (2) the petition fee;
- (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, and;
- (4) a terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (d) of this section.

transmitting issue or publication fees². Accordingly, the above-identified application became abandoned on October 29, 2005. A Notice of Abandonment was mailed on December 15, 2005.

With the present petition, Petitioner has asserted that a response to this communication was submitted on October 17, 2005.

Petition fee requirement

The fee for filing a petition to revive an unintentionally abandoned application under 37 C.F.R. §1.137(a) is set forth in 37 C.F.R. §1.17(1) as being \$500 for a large entity and \$250 for a small entity. Although Petitioner indicated in his petition that said fee was included with the petition, there is no record of said fee actually having been received, due to an inability to charge this fee to a Deposit Account.

The handwritten Deposit Account information which appears on the form PTOL-85b that was included with this petition is not legible. The undersigned attempted to charge this fee (along with the issue and publication fees) to the Deposit Account number that appears on the Fee Transmittal Sheet which was submitted on March 28, 2003 ("5022-32"), however these fees cannot be charged to this Deposit Account.

Therefore, requirement number (2) of Rule §1.137(a) has not been met. The payment of the required petition fee is a prerequisite to the filing of a petition to revive under 37 C.F.R. §1.137. Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature. See M.P.E.P. 711.03(c)(III)(B)³

In view of the above, this petition is **DISMISSED**.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled

² See MPEP §710.02(e).


³ "...[T]he payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application and cannot be waived. In addition, the phrase '[o]n filing' in 35 U.S.C. §41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. §1.137. See H.R. Rep. No. 542, 97th Cong., 2nd Sess. 6 (1082), reprinted in 1982 U.S.C.C.A.N. 770 ('[t]he fees set forth in this section are due on filing the petition'). Therefore, the Office...will not reach the merits of any petition under 37 C.F.R. §1.137 lacking the requisite petition fee."

"Renewed Petition Under 37 C.F.R. 1.137(a)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail⁴, hand-delivery⁵, or facsimile⁶.

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225⁷. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.


Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

5 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

6 (571) 273-8300- please note this is a central facsimile number.

7 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.